SANITARY LEGISLATION.

COURT DECISIONS.

NEW JERSEY COURT OF CHANCERY.

Tuberculosis Hospital—Location—Injunction to Prohibit Erection Refused.

CITY OF NORTHFIELD *v.* ATLANTIC COUNTY, 95 Atl. Rep., 745. (July 22, 1915.)

The fact that the location of a county tuberculosis hospital in a certain place will reduce the market value of property in the vicinity is not sufficient to justify a court in granting an injunction prohibiting the location of the hospital in that place.

The officials of Atlantic County, N. J., decided to establish a tuberculosis hospital in the city of Northfield. The State board of health approved the site selected. The city and residents in the vicinity asked an injunction prohibiting the erection of the hospital. The court decided that the evidence did not show that such an institution, properly operated, was a danger to health, and refused to issue the injunction.

LEAMING, V. C.: The bill is filed by the city of Northfield and several property holders of that municipality, and prays that the board of freeholders of Atlantic County be enjoined from erecting and conducting at a certain place within the city of Northfield a certain hospital which the board has determined to erect for the care of patients afflicted with pulmonary tuberculosis.

The county of Atlantic is the owner of a tract of land containing in area about 150 acres, the major portion of which is within the boundaries of the municipality of Northfield. On this county tract the county asylum for the insane and the county almshouse are now located. The tract has a frontage on the shore road of 775 feet and extends therefrom of that width in a northwesterly direction something over 3,000 feet. The insane asylum and almshouse are each located on this tract near and facing the shore road. The proposed hospital is to be erected in the rear of these buildings and at a point approximately in the center of the county tract. This will place the hospital building about 1,600 feet away from the other county buildings and about 1,900 feet from the shore road, and no part of the proposed building will be nearer than 250 feet from the side boundaries of the county tract.

The complainant city of Northfield is a sparsely settled municipality, its territory consisting chiefly of farms and woodland. In area the municipality is about 2 miles square and contains a population of 866 according to the census of 1910. Since that time the population has increased little, if any. The individual complainants are property owners in the vicinity of the county tract, and some of them own farm land adjacent thereto.

The nearest residence to the proposed hospital building is that of complainant Benjamin Risley, and is about 900 feet away. The residence of complainant William Risley is about 1,200 feet away; that of complainant Harry Collins about 1,500 feet away. No others appear to be nearer than 1,800 feet.

By act of April 21, 1909 (P. L. 421), our legislature declared tuberculosis to be an infectious and communicable disease, and dangerous to the public health. That act contained various provisions designed to afford protection against the spread of tuberculosis. At the same session of the legislature (P. L. 548), a joint resolution made provision for a commission to investigate and report advice touching appro-

priate means to prevent the spread of tuberculosis. Pursuant to the report of that commission, the legislature of 1910 (P. L. 129) made provisions for the establishment of county hospitals for tuberculosis patients. In 1912 (P. L. 340) another similar and more complete act made provision for the establishment of county tuberculosis hospitals. It is under the provisions of the latter act that the present hospital is being erected. By act of March 21, 1910 (P. L. 93), it is made unlawful for any hospital for the treatment of pulmonary tuberculosis to be located or established without first obtaining the consent and approval of the State board of health. The act provides for an application to the State board accompanied by a descriptive map of the premises proposed to be devoted to the use stated, and requires the State board to then fix a time and place for a hearing on the application, and specifies the notices of the hearing to be given. After the hearing the board either authorizes or refuses to authorize the establishment of the proposed hospital. Pursuant to this act, application was made by defendant board to the State board of health for leave to construct and operate the hospital here in question at the place where it is now being constructed, and notice of the application was given pursuant to the requirements of the act. At the time fixed by the State board a hearing was had, and the matter of location was considered, and the State board determined the proposed location a suitable one, and permission was then given for the defendants to establish the hospital at the place where it is now being constructed.

This legislation establishes a special tribunal to pass upon the question of appropriate location of hospitals of this nature. After an adjudication by that statutory tribunal, based on a hearing on adequate notice, that a given location is a proper location, it would seem that this court can not properly review that question or base relief upon the claim that the location is not a proper location. There is, however, some doubt in my mind whether that statute can be said to have been intended to include tuberculosis hospitals established by municipalities.

But I think it unnecessary to fully consider or determine what force should be here given to the adjudication of the State board touching the suitableness of the site selected.

The evidence submitted does not justify a conclusion that any danger to health exists or can be reasonably apprehended from the operation of this institution, providing it is properly operated. In this view the only possible ground for relief is the claim that the establishment of the hospital is operative to materially reduce the market value of the adjacent real estate. That claim, standing alone, can not justify the relief here sought. There are some authorities apparently to the contrary, but the weight of authority is clearly to the effect stated. A person can not be denied the right to make a lawful use of his property merely because such use is operative to injure the market value of his neighbor's property; he will not be permitted to disturb the quiet enjoyment of his neighbor's habitation by interference with the atmosphere by unreasonable noises, odors, or gases; he will not be permitted to physically disturb his neighbor's property, as by backing water upon it or otherwise physically interfering with it, but the mere disturbance of market value is not regarded as an infringement of an existing right in the party damnified and can not be made the basis of relief of this nature.

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Wolcott *v.* Melick, 11 N. J. Eq. 204, 66 Am. Dec. 790; Ross *v.* Butler, 19 N. J. Eq. 294, 303, 97 Am. Dec. 654; Cleveland *v.* Citizens' Gaslight Co., 20 N. J. Eq. 201; Duncan *v.* Hayes, 22 N. J. Eq. 25, 29; Board of Health *v.* Trenton (N. J. Ch.) 63 Atl. 897; Patton *v.* North American Home, 77 N. J. Eq. 464, 78 Atl. 677. See, also, Barry *v.* Smith, 191 Mass. 78, 77 N. E. 1099, 5 L. R. A. (N. S.) 1028, 6 Ann. Cas. 817; Frazer *v.* Chicago, 186 Ill. 480, 57 N. E. 1055, 51 L. R. A. 306, 78 Am. St. Rep. 296.

I am obliged to deny preliminary restraint and will dismiss the order to show cause.